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LLP

January 23, 2019

VIA E-MAIL & REGULAR MAIL

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City of Fresno
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Re: Measure P

Dear Mayor Brand:

I write on behalf of Fresno Building Healthy Communities. As you know, Measure P in the City of Fresno was approved by 52 % of the voters in the November, 2018 election. When the City Council declared the results of the election, it indicated that Measure P failed because it had not received approval by two-thirds of the voters. We believe this conclusion is based on an erroneous interpretation of the law and request that the City declare that Measure P was, in fact, approved by the voters.

It is true that if a special tax measure is placed on the ballot by a city council or board of supervisors, the measure requires approval by two-thirds of the voters. (Cal. Const., art. XIIIIC, § 2(d); Gov. Code, § 7285.91 [governing bodies can impose special taxes if approved by two-thirds of the voters].) However, in 2017, the California Supreme Court ruled that the constitutional restrictions imposed on local *governing bodies* do *not* apply to measures submitted to voters through the initiative petition process. (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924 [“Upland”].) In cases involving citizen initiatives, the Court held that the normal election rule applies that measures are enacted if approved by a majority of voters. (*Upland*, citing Elec. Code, § 9217.)

Measure P was placed on the ballot by a citizen initiative rather than a vote of the City Council.

We note that at least three tax measures have recently been certified as approved after receiving approval of a majority of voters, but less than two-thirds. In October, 2017, San Francisco approved a gross receipts tax on commercial rents and, in November, 2018, Del Norte County and the City of Oakland enacted special taxes. In each of these cases, the respective City Attorneys and County

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Counsel concluded that the *Upland* case eliminated the two-thirds voting requirement for tax measures proposed by the initiative.

We therefore request that Measure P be declared approved by the voters of the City of Fresno and that the City immediately begin negotiations with the California Department of Tax and Fee Administration to enter into a contract to collect this revenue pursuant to section 7270 of the California Revenue and Tax Code. We ask that you take this action immediately or that you notify us no later than January 31, 2019, that you do not intend to take this action so that my client may determine if litigation is an appropriate recourse.

Very truly yours,

OLSON HAGEL & FISHBURN LLP

A handwritten signature in black ink, appearing to read "Lance H. Olson".

LANCE H. OLSON

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cc: Douglas Sloan, City Attorney